



No. 83-1128

In the Supreme Court of the United States

OCTOBER TERM, 1983

MARY LOUISE SEAY, a/k/a MARY LOUISE DERRINGER,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's statements that she had not remarried, made on forms she submitted in order to continue receiving federal employees' compensation benefits, afforded an adequate ground for her convictions for making false statements, in violation of 18 U.S.C. 1001.

2. Whether petitioner's common law marriage was properly used to prove that she made false statements, in violation of 18 U.S.C. 1001, and that she received federal employees' compensation to which she was not entitled, in violation of 18 U.S.C. 1921.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 718 F.2d 1279.

JURISDICTION

The judgment of the court of appeals was entered on October 11, 1983. On December 5, 1983, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including January 9, 1984 (Pet. App. 25a), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of South Carolina, petitioner was convicted on three counts of making false statements in a matter within the jurisdiction of a federal agency, in violation of 18

U.S.C. 1001, and on one count of knowingly receiving federal employees' compensation to which she was not entitled, in violation of 18 U.S.C. 1921. Petitioner was sentenced to two years' imprisonment on the three Section 1001 counts, all but six months of which was suspended in favor of five years' probation. Sentencing on the Section 1921 count was suspended in favor of five years' probation, to run concurrently with the sentence on the Section 1001 counts. In addition, petitioner was ordered to make restitution in the amount of \$13,261.92.

1. The evidence at trial (see Pet. App. 3a-6a) showed that in 1950 petitioner became eligible for benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, because of the death of her husband, Edward Derringer, while he was on active duty as a reservist. After Derringer's death, petitioner applied for and received benefit payments. Thereafter, petitioner received a copy of a Department of Labor form dated November 3, 1953, entitled "Compensation Order Award of Compensation." The award included a finding of fact "[t]hat the claimant above named is entitled to compensation on her own account until she dies or remarries." Instructions that accompanied the Compensation Order provided that "[i]f, when a check reaches you, your status has changed through remarriage or otherwise . . . you should return the check immediately to this office accompanied by a full explanation of any change in the status of yourself." Pet. App. 4a-5a.

Under 5 U.S.C. 8133(b)(1), FECA compensation is paid until a widow or widower dies or remarries before reaching age 60. On remarriage before reaching age 60, a widow or widower is entitled to a lump-sum payment equal to 24 times the monthly compensation payment to which he or she was entitled immediately before the remarriage (5 U.S.C. 8135). In 1962, a Department of Labor agent visited

petitioner. At the agent's request, petitioner signed the following handwritten statement:

This is to advise that I, Mrs. Mary L. Derringer, residing at 3030 Park Street, Columbia, South Carolina, wish to state that I have not remarried, or entered into a common-law marital relationship.

In addition to B.E. Compensation, my three children receive \$67.40 Social Security and I receive \$29.30 per month.

I wish to continue the practice of having my check mailed to my Mother's address at 1115 Northwood Street, Columbia, South Carolina.

Petitioner testified that she asked the agent why he had come and whether he was making a periodic check. When the agent asked her to sign the statement she replied, "Yes, I will sign it, but I don't understand why that you are talking about common law, remarriage and all of that, because I have not entered into either one of them." Pet. App. 3a-4a.

In December 1962, approximately nine months after she had signed the statement, petitioner and her four children moved from their residence in Columbia, South Carolina, to the home of Coke Seay, a widower who lived in the nearby town of Lexington. The couple had sexual relations both before and after they began living together. Shortly after they began living together, petitioner and Seay transferred their church memberships from separate churches to the Providence Lutheran Church in Lexington. They joined the church as "Mr. and Mrs. Coke Seay" and appeared in the church pictorial directory as "Coke & Louise Seay." The minister of the Providence Lutheran Church testified that the church's members considered the couple to be married. The couple continued to be members of the church from 1962 until 1981. The mailman who delivered mail in the

neighborhood of petitioner's former house and her mother's house testified that he knew petitioner as Mrs. Seay and that he had heard that she had married and moved to Lexington. The mailman for the route that included Coke Seay's house testified that he delivered mail of a personal nature addressed to Mrs. Coke Seay. Petitioner's former son-in-law testified that he addressed her as Mrs. Seay and that she had stated to him that she was married to Coke Seay. In 1973 petitioner signed "Louise Seay" on a renunciation of dower for a right-of way easement involving property owned by Coke Seay. Pet. App. 4a, 7a-8a n.6.

During the time she lived with Seay, petitioner filed her income tax returns under the name Derringer and generally referred to herself as Derringer in business transactions and public records (Pet. App. 7a n.5). Petitioner also used the name Derringer in her correspondence with the Labor Department, and she did not advise the Department of her relationship with Seay. Petitioner requested that her FECA benefits be sent either to her mother's address (even after her mother died) or to a post office box, rather than to the house where she resided with Seay (*id.* at 8a n.7). Petitioner filled out Labor Department forms entitled "Claim for the Continuance of Compensation" on July 1, 1977, May 6, 1978, and December 15, 1980. The forms included the question: "Have you married since the death of the above named employee? Yes _____ No _____ If 'yes' complete 10."¹ Petitioner marked "No" in response to that question. Pet. App. 5a. Petitioner's convictions for false statements were based on those responses.

In 1981, after the Labor Department began an investigation into her marital status, petitioner moved out of Coke Seay's house on the advice of her attorney. In addition, she

¹Question 10 asked: "When and where was the marriage performed and what was the change in name, if any" (Pet. App. 5a).

transferred her membership back to the Park Street Baptist Church, where she had previously been a member. The Labor Department terminated FECA payments to petitioner in March 1981. Pet. App. 3a, 4a.

2. The court of appeals affirmed petitioner's convictions, one judge dissenting (Pet. App. 1a-24a). The court held that there was sufficient evidence for the jury to find beyond a reasonable doubt that petitioner and Coke Seay had entered into a common law marriage (*id.* at 6a-8a). The court of appeals concluded that the trial court had instructed the jury properly concerning the elements of 18 U.S.C. 1001 (Pet. App. 9a-10a). The court rejected petitioner's claim that her due process rights were violated by her convictions. It concluded that petitioner could not have been misled by the questions on the Department of Labor forms, because the statement she signed in 1962 put her on notice that the Department was concerned with any marriage that could change her entitlement to benefits (*id.* at 13a-14a). Finally, the court held that references to religious issues during the trial did not constitute reversible error, since petitioner did not object to the references and in fact had herself interjected the issue of religion into the case (*id.* at 14a-15a).

Judge Butzner, in dissent, took the view that "[a]t the most, the record discloses a civil controversy" (Pet. App. 16a). In his view, petitioner had insufficient notice that she was required to report a common law marriage. Judge Butzner also concluded that the prosecutor had engaged in unfair cross-examination and that the trial court's definition of common law marriage deprived petitioner of due process. *Id.* at 16a-24a.

ARGUMENT

Petitioner contends that she could not be convicted under Section 1001 because a reasonable person could have concluded from the Labor Department forms that the agency

was interested in knowing only whether a ceremonial marriage had been performed. In addition, she contends that her common law marriage could not properly be used to establish violations of Sections 1001 and 1921 because state law is too vague to put parties on notice of whether their conduct creates such a relationship. The validity of these contentions appears to depend primarily on the sufficiency of the evidence concerning whether petitioner entered into a common law marriage and whether she made false statements with the requisite knowledge of their falsity.

We recognize that the evidence in this case regarding petitioner's marital status and her knowledge thereof was borderline, but the jury's verdict is not without support in the record. See *Glasser v. United States*, 315 U.S. 60, 80 (1942). Moreover, the holding of the court of appeals seems clearly fact-bound. The facts of this case are quite unusual and are unlikely to recur. Thus, the case does not appear to warrant review by this Court.

1. Petitioner contends first (Pet. 8-12, 15-16) that her convictions under Section 1001 should be reversed because it was unclear whether the questions on the Labor Department forms referred to common law marriage or only to ceremonial marriage. It is true that the initial question concerning remarriage did not refer explicitly to common law marriage; but neither did it state that the Department was interested only in ceremonial marriages. The question "[h]ave you married since the death of the above named employee?" asked in connection with a claim for FECA benefits, normally would be understood to refer to any marriage. Since South Carolina recognizes common law marriage, the question, as applied to petitioner, referred to both ceremonial and common law marriages.²

²The Labor Department clearly had reason to inquire about any sort of marriage, including common law marriage. Under 5 U.S.C. 8133(b)(1)

It is the presence of Question 10, which asked "[w]hen and where * * * the marriage [was] performed * * *?" that creates some uncertainty about whether the initial question referred to common law marriage. However, the jury must have concluded that petitioner was not confused by the questions, since its verdict implicitly incorporates a finding that petitioner knew her statements were false. The trial court instructed the jury on the elements required for proof of a Section 1001 violation, including actual falsity and intent to make a false statement.³ The court also instructed the jury on the elements necessary for a common law marriage under South Carolina law, including agreement to be

and 8135, Congress has provided for a lump sum payment and termination of death benefits received under FECA when a beneficiary remarries prior to age 60. The statute on its face does not differentiate between ceremonial marriage and common law marriage, and there is no reason to believe Congress intended to refer only to ceremonial marriages. Congress presumably chose remarriage as the triggering event for termination of benefits because individuals who are married obtain certain legal rights (e.g., rights to support and rights in a spouse's estate) that unmarried individuals do not enjoy. Since the legal consequences of common law marriage are the same as those of ceremonial marriage, it would be natural for Congress to refer to both. By the same token, it is not in the least anomalous that cohabitation in states that do not recognize common law marriage would not cause a termination of FECA benefits, since cohabitation without remarriage would not by law provide alternative economic obligations that could take the place of the FECA benefits.

³The trial court instructed the jury, *inter alia*, that it was required to find that petitioner made a false statement "knowing at that time that the writing or document was false or fictitious and fraudulent" (C.A. App. 420); that "[a]n act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or any other innocent reason" (*id.* at 426); that "[a]n act is done willfully if done voluntarily and intentionally, and with the specific intent to do something which the law forbids" (*ibid.*); and that "the word knowingly is added in order to ensure that no defendant will be convicted in this court who made or caused to be made a statement or representation which was false, because of some mistake or accident or any other reason on the part of the defendant" (*ibid.*).

married.⁴ The jury's verdict indicates that it found beyond a reasonable doubt that petitioner knew she had entered into a common law marriage and knew that her statements that she had not remarried were false. Thus, the jury must have rejected any claim by petitioner that she did not understand the questions on the Labor Department forms or realize that she was responding falsely.⁵

The court of appeals concluded that there was sufficient evidence to support the jury's findings (Pet. App. 6a-8a, 13a-14a).⁶ The court of appeals correctly noted (*id.* at 13a) that in 1962, at the request of a Labor Department investigator, petitioner signed a statement that she had not entered into a common law marriage. That statement put petitioner on notice that the Department was concerned with common law marriages and that any such marriage could change her entitlement to FECA benefits.⁷ The court of appeals also

⁴The trial court instructed the jury that "it is essential to a common law marriage that there shall be a mutual agreement and understanding between the parties to assume toward each other the relationship of husband and wife" (C.A. App. 421-422). Petitioner acknowledges (Pet. 12 n.10) that the trial court properly instructed the jury that it was required to find that petitioner knowingly entered into a common law marriage.

⁵In any event, we note that the situation in this case is unlikely to recur. The Department of Labor advises us that it is in the process of revising the form on which petitioner made her false statements, so that the questions concerning remarriage will include an explicit reference to common law marriage.

⁶See also the trial judge's statement before discharging the jury (C.A. App. 447) ("I think from the evidence you have reached a fair and a just verdict, one that I would personally consider supported by the evidence in the case") and his comments at sentencing (*id.* at 476).

⁷In the 1962 statement, petitioner represented that she had "not remarried, or entered into a common-law marital relationship" (Pet. App. 4a). In addition, petitioner testified that she told the Labor Department investigator that she had not entered into "common law, remarriage and all of that" (*ibid.*).

noted (*id.* at 8a n.7) that the inconsistency between petitioner's use of the name Mrs. Derringer in her business transactions and her use of the name Mrs. Seay in nonbusiness matters could have suggested to the jury a deliberate attempt to conceal her common law marriage in order not to lose FECA benefits to which petitioner knew she was no longer entitled.

Petitioner suggests (Pet. 8-12) that the decision below conflicts with several Section 1001 cases holding that when there are ambiguities in a question the government must "negative any reasonable interpretation that would make the defendant's statement factually correct." *United States v. Anderson*, 579 F.2d 455, 460 (8th Cir.), cert. denied, 439 U.S. 980 (1978). See also *United States v. Diogo*, 320 F.2d 898, 905-907 (2d Cir. 1963). However, the Fourth Circuit itself has adopted this same test in *United States v. Race*, 632 F.2d 1114, 1120 (1980) (quoting *Anderson*). Thus, the decision below would create at most an intracircuit conflict that would not warrant this Court's attention. See *Wisniewski v. United States*, 353 U.S. 901 (1957).

In any event, there appears to be no conflict between *Anderson* and *Diogo*, on the one hand, and the decision below, on the other. Since the court below cited *Race* (Pet. App. 9a), it presumably was aware that the standard articulated in *Anderson* is the law of the Fourth Circuit. The court could have concluded that *Anderson* and *Diogo* were distinguishable on their facts. In *Anderson* the court found that the government had failed to prove willfulness and knowing falsity, and in *Diogo* the court concluded (320 F.2d at 909) that the government had not proved the marital status of the defendants under the relevant state law. Here, in contrast, the court of appeals concluded that there was sufficient evidence to support the jury's findings that petitioner had entered into a common law marriage under

South Carolina law and that she acted knowingly and willfully in making false statements.⁸

2. Petitioner also contends (Pet. 13-15) that her common law marriage could not be used to establish violations of Sections 1001 and 1921 because state law is too vague to put parties on notice of whether their conduct creates such a relationship. But the jury must have found that petitioner herself knew she was married. South Carolina courts have held that agreement to be married is essential to a common law marriage. See, e.g., *Johnson v. Johnson*, 235 S.C. 542, 550, 112 S.E.2d 647, 651 (1960). The trial court accordingly charged, inter alia, that "it is essential to a common law marriage that there shall be a mutual agreement and understanding between the parties to assume toward each other the relationship of husband and wife" (Pet. App. 10a). The court also instructed the jury that in order to convict

⁸And see *United States v. Diogo*, 320 F.2d at 907 ("In a prosecution for perjury or false representation, absent fundamental ambiguity of the kind found in [*United States v. Lattimore*, 127 F. Supp. 405 (D.D.C.), aff'd, 232 F.2d 334 (D.C.Cir. 1955)], the question of what a defendant meant when he made his representation will normally be for the jury."); see also *United States v. Carrier*, 654 F.2d 559, 562 (9th Cir. 1981); *United States v. Weatherspoon*, 581 F.2d 595, 601 (7th Cir. 1978); *United States v. Lanier*, 578 F.2d 1246, 1252 (8th Cir.), cert. denied, 439 U.S. 856 (1978); *United States v. Steinhilber*, 484 F.2d 386, 389 (8th Cir. 1973).

Petitioner cites (Pet. 9) a passage from the court of appeals opinion in which the court stated that the Labor Department forms did not "preclude a reasonable interpretation that the agency might be interested in something other than a ceremonial marriage" (Pet. App. 14a). However, that statement does not appear to be a rejection of the general principle set out in *Anderson*, *Diogo*, and *Race*. Instead, it may reflect the view that that general principle does not apply in cases in which an individual in fact understands a question, whether or not others might find it to be ambiguous. The court made the quoted observation only after it concluded that the statement petitioner signed in 1962 gave her actual notice that a common law marriage would result in termination of her FECA benefits.

petitioner of the criminal charges against her it had to find that she made the false statements "knowing at that time that the writing or document was false * * *" (*id.* at 9a), *i.e.*, that she knew she was married when she made the statements.

As the court of appeals noted (Pet. App. 7a & n.6), there was considerable evidence that petitioner and Coke Seay had held themselves out as married in a number of instances. See also pages 3-4, *supra*. In addition, the jury was entitled to conclude from the evidence of petitioner's attempts to conceal from the government her relationship with Coke Seay that she knew she was married to him. See Pet. App. 8a n.7. In these circumstances, petitioner cannot complain of either insufficient notice or arbitrary enforcement in connection with the prosecution's use of her common law marriage to establish violations of federal law. See *Kolender v. Lawson*, No. 81-1320 (May 2, 1983), slip op. 5.

Petitioner states (Pet. 12 n.9) that she "has also preserved for review the sufficiency of the evidence to prove a common law marriage under South Carolina law." To the extent the court of appeals was uncertain about the legal standard for common law marriage under South Carolina law, it presumably could have certified the question to the South Carolina Supreme Court, as petitioner notes (Pet. 12 n.9). See *Clay v. Sun Insurance Office Limited*, 363 U.S. 207, 212 (1960). Rule 46 of the Rules of the Supreme Court of South Carolina provides that that court in its discretion may answer a question of law certified to it by any federal court if there is no controlling precedent of the South Carolina Supreme Court on that question. We are uncertain whether the certification procedure would extend to a mixed question of law and fact concerning the application of the legal standard to the particular facts of this case. In any event, that question of state law clearly does not warrant consideration by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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